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WOODCOCK WASHBURN LLP			PARSLEY, DAVID J	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/521,087	SEDER, JEFFREY A.
	Examiner David J. Parsley	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 October 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-23,28,29 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-23,28,29 and 32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 October 2007 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 10-26-07 and this action is final.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-23, 28-29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Cardiac responses to training in 2-year old Thoroughbreds: an echocardiographic study" to Young (supplied by applicant), hereafter referred to as Young1 in view of "Relative Wall Thickness: A Useful Indicator of Sports Specific Cardiac Adaptations to Training in Horses" to Young (supplied by applicant) hereafter referred to as Young2.

Referring to claim 1, Young1 discloses a method of screening a racehorse candidate, the method comprising, obtaining a measurement of the width of the ventricular septal wall of the racehorse candidate – see pages 196-197, and comparing the measurement to a collection of measurements from a group of horses – see pages 195-197, wherein the collection

of measurements comprises ventricular septal wall width measurements for horses of about the same age, sex and weight as the racehorse candidate – see pages 195-197. Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user.

Referring to claim 3, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it

would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as to allow for more competitive racing horses to be predicted and picked by the user.

Referring to claim 4, Young1 as modified by Young2 does not disclose the screening takes place at an auction. However, comparing physical statistics of a racehorse can be done at any location and applicant does not disclose that the screening taking place at an auction is critical to the operation of the invention in view of other locations and it is deemed that the method of Young1 as modified by Young2 would perform equally as well with the screening being done at an auction. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the screening being done at an auction, so as to allow for the user better select a horse during use.

Referring to claim 5, Young1 as modified by Young2 further discloses obtaining measurements that can be used to determine the cross-sectional area of the left ventricle in diastole of the racehorse candidate – see pages 195-197 of Young1, wherein the collection of measurements further comprises left ventricle in diastole cross-sectional area measurements for horses about the same age, sex and weight as the racehorse candidate – see pages 195-19 of Young1. Young1 as modified by Young2 does not disclose measuring the cross-sectional area of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the measuring of the cross-sectional area of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 6, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 7, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not

disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claims 8-9, Young1 as modified by Young2 further discloses the ventricular septal wall is situated between a left ventricle and a right ventricle, the left ventricle having a free wall and at least one moderator band extending between the ventricular septal wall and the right free wall, the right ventricle having a free wall having an endocardial edge, the right ventricular free wall terminating at a junction with an interventricular septum and wherein the width measurement is obtained by measuring, in a left parasternal short-axis view obtained at end diastole, the distance from the endocardial edge of the right ventricular free wall, at the point where the wall meets the interventricular septum, through the interventricular septum, to the point of attachment of the moderator band to the ventricular septal wall in the left ventricle – see pages 195-197 of Young1.

Referring to claim 10, Young1 as modified by Young2 further discloses the left ventricle in diastole cross-sectional area measurement is obtained by measuring the circumference of the left ventricular chamber – see pages 195-197 of Young1.

Referring to claim 11, Young1 as modified by Young2 further discloses the left ventricle in diastole cross sectional area measurement is obtained from a left parasternal short-axis echocardiogram of the left ventricle of the racehorse – see pages 195-197 of Young1.

Referring to claims 12 and 21, Young1 as modified by Young2 further discloses obtaining measurements that can be used to determine the cross-sectional area of the left ventricle in systole of the racehorse candidate – see pages 195-197 of Young1, wherein the collection of measurements further comprises left ventricle in diastole cross-sectional area measurements for horses about the same age, sex and weight as the racehorse candidate – see pages 195-197 of Young1. Young1 as modified by Young2 does not disclose measuring the cross-sectional area of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the measuring of the cross-sectional area of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 13, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have

been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 14, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by

Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 15, Young1 as modified by Young2 does not disclose obtaining a measurement of the cross-sectional area of the spleen of the racehorse candidate, wherein the collection of measurements further comprises splenic cross-sectional area measurements of horses of about the same age, sex and weight as the racehorse candidate. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the measuring of the spleen, so as to determine the health of the racehorse.

Referring to claim 16, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the spleen. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as

modified by Young2 and add the comparing of cross-sectional measurements of the spleen, so as to allow for the health of the racehorse to be predicted.

Referring to claim 17, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the spleen. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the spleen, so as to allow for the health of the racehorse to be predicted.

Referring to claim 18, Young1 as modified by Young2 discloses obtaining a weight measurement and the collection of weight measurements from horses of about the same age and sex as the racehorse candidate – see pages 195-197 of Young1. Young1 as modified by Young2 does not disclose obtaining height measurements. However, it would have been obvious to one of ordinary skill in the art to take the device of Young1 as modified by Young2 and add the obtaining of height measurements of horses, so as to allow for the comparisons of the horses to be made more accurate.

Referring to claim 19, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and the weights and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing the height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing the height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claim 20, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and weights and therefore a racehorse with a septal

wall greater than the mean septal wall width and weight greater than the mean weight can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of the height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claims 22 and 29, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and weight and therefore a racehorse with a septal wall greater than the mean septal wall width and weight greater than the mean weight can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall

measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle and height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle and height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claim 23, Young1 as modified by Young2 further discloses comparing the measurements of the ventricular septal wall and weight and therefore a racehorse with a septal wall greater than the mean septal wall width and weight being greater than the mean weight can be viewed from the collection of measurements – see pages 195-197 of Young1. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of

ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle and height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle and height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claim 28, Young1 as modified by Young2 further discloses the racehorse candidate is a two year old – see pages 195-196 of Young1.

Referring to claim 32, Young1 as modified by Young2 further discloses obtaining an echocardiographic image of the heart of the racehorse – see pages 195-197 of Young1, rating the image according to at least one cardiac parameter selected from the group of the general shape of the heart at diastole and systole and clarity of the image in diastole – see pages 195-197 of Young1 and ratings of a group of horses of about the same age, sex and weight of the racehorse candidate – see figures 195-197 of Young1. Young1 does not disclose comparing the ratings of the images with other horses. Young2 does disclose comparing echocardiograph images of horses – see pages 554-55. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing echocardiograph images of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user.

Response to Arguments

3. Applicant's amendments overcome the 35 U.S.C. 112 2nd paragraph rejections set forth in the office action dated 8-27-07.

Regarding the prior art rejections the reference referred to as Young2 above in paragraph 2 of this office action was published before applicant's earliest effective filing date of 7-17-02 in that this reference is an article in the Journal of Equine Veterinary Science, Volume 19, No. 9, pages 554-555 dated September 1999. Therefore the prior art references used each were published before applicant's earliest effective filing date and the prior art rejections are deemed to be proper.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID PARSLEY
PRIMARY EXAMINER